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Government of Kerala
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Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1426/LA4/78. *Dated, Trivandrum, 20th January 1978.*

The Kerala Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Bill, 1978 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

33/226/MC.

THE KERALA DEPARTMENTAL INQUIRIES (ENFORCEMENT OF ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS) BILL, 1978

A

BILL

to provide for the enforcement of attendance of witnesses and production of documents in certain departmental inquiries and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS it is expedient to provide for the enforcement of attendance of witnesses and production of documents in certain departmental inquiries and for matters connected therewith or incidental thereto;

BE it enacted in the Twenty-eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Departmental inquiries in which the Act shall apply.*—The provisions of this Act shall apply to every departmental inquiry made in relation to—

(a) persons appointed to public services and posts in connection with the affairs of the State;

(b) persons who having been appointed to any public service or post in connection with the affairs of the State, are in the service or pay of—

(i) any local authority in the State;

(ii) any corporation established by or under a State Act and owned or controlled by the Government;

(iii) any society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 or the Societies Registration Act, 1860, which is subject to the control of the Government.

3. *Definitions.*—For the purposes of this Act,—

(a) "departmental inquiry" means an inquiry held under and in accordance with—

(i) any law made by the Kerala State Legislature or any rule made thereunder, or

(ii) any rule made under the proviso to article 309 of the Constitution and continued under the Kerala Public Services Act, 1968,

into any allegation against any person to whom this Act applies;

(b) "inquiring authority" means an officer or authority appointed by the Government or by any officer or authority subordinate to the Government to hold a departmental inquiry and includes any officer or authority who is empowered by or under any law or rule for the time being in force to hold such inquiry;

(c) "State" means the State of Kerala.

4. *Power of Government to authorise the exercise of powers specified in section* 5.—(1) Where the Government are of opinion that for the purposes of any departmental inquiry it is necessary to summon as witnesses, or call for any document from any class or category of persons, they may, by notification in the Gazette, authorise the inquiring authority to exercise the power specified in section 5 in relation to any person within such class or category and thereupon the inquiring authority may exercise such power at any stage of the departmental inquiry.

(2) The power conferred on the Government by sub-section (1) may also be exercised by such authority, not being an authority inferior to the appointing authority in relation to the person against whom the departmental inquiry is being held, as the Government may, by notification in the Gazette, specify in this behalf.

5. *Power of authorised inquiring authority to enforce attendance of witnesses and production of documents.*—(1) Every inquiring authority authorised under section 4 (hereafter referred to as the "authorised inquiring authority") shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters namely:—

(a) summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document or other material which is producible as evidence;

(c) the requisitioning of any public record from any court or office.

(2) Notwithstanding anything contained in sub-section (1), the authorised inquiring authority shall not compel the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of

section 2 of the State Bank of India (Subsidiary Banks) Act, 1959, or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970—

(a) to produce any books of account or other documents which the Reserve Bank of India, the State Bank of India, the subsidiary bank or the corresponding new bank claims to be of a confidential nature, or

(b) to make any such books or documents a part of the record of the proceedings of the departmental inquiry, or

(c) to give inspection of any such books or documents, if produced, to any party before it or to any other person.

(3) Every process issued by an authorised inquiring authority for the attendance of any witness or for the production of any document shall be served and executed through the District Judge within the local limits of whose jurisdiction the witness or other person, on whom the process is to be served or executed voluntarily resides or carries on business or personally works for gain, and for the purpose of taking any action for the disobedience of any such process, every such process shall be deemed to be a process issued by the District Judge:

Provided that nothing contained in this sub-section shall apply where the authorised inquiring authority is a Tribunal appointed under the Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960.

(4) Every authorised inquiring authority making any departmental inquiry under this Act shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

6. *Territorial limits in which powers specified in section 5 may be exercised.*—For the purpose of exercising the powers specified in section 5, the territorial jurisdiction of every authorised inquiring authority shall extend to the whole State.

7. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purpose of giving effect to the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

8. *Amendment of Kerala Enquiries and Summonses Act,* 1960.—In section 9 of the Kerala Enquiries and Summonses Act, 1960 (24 of 1960), sub-section (2) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

There is at present no law in this State, other than the Kerala Enquiries and Summonses Act, 1960, under which an authority holding a departmental enquiry can enforce the attendance of witnesses or production of relevant documents. Under section 9(2) of that Act, the power of a civil court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, etc., can be invested by the Government only on an officer deputed by them to make an enquiry into the conduct of any public servant.

2. Parliament has enacted the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 (Central Act 18 of 1972), which empowers the Central Government to authorise any inquiring authority to exercise the power of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, etc. According to that Act, "inquiring authority" means an officer or authority appointed by the Central Government or by an officer or authority subordinate to that Government to hold a departmental inquiry and includes any officer or authority who is empowered by or under any law or rule for the time being in force to hold such inquiry. The scope of Central Act 18 of 1972 is thus wider than that of the Kerala Enquiries and Summonses Act.

3. It is considered necessary to enact a legislation in this State also, on the lines of the Central Act. The Bill is intended for this purpose.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to empower the Government and officers specified by the Government to authorise inquiring authorities holding departmental inquiries to exercise the powers of a civil court in respect of summoning and enforcing the attendance of witnesses and examining them on oath, requiring the discovery and production of any document or other material and the requisitioning of any public record from any court or office. According to sub-clause (3) of clause 5 of the Bill, every process issued by an authorised inquiring authority for the attendance of witnesses or for the production of documents shall be executed through the District Judge. Therefore, no separate machinery is proposed to be created for the purpose. However, expenditure by way of T. A. and D. A. to Government Servants, if they are summoned as witnesses and batta if the witnesses are not Government Servants, will have to be incurred if the Bill is enacted and brought into operation. But the exact amount of expenditure to be incurred on this account cannot now be estimated with any degree of accuracy.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 1 of the Bill seeks to empower the Government to appoint by notification in the Gazette, the date on which the Act shall come into force.

2. Sub-clause (1) of clause 4 seeks to empower the Government to authorise the inquiring authority by notification in the Gazette to exercise the power specified in clause 5 in relation to any person within any class or category of persons if the Government are of opinion that it is necessary to summon as witnesses or to call for any document from such class or category of persons for the purposes of any departmental inquiry.

3. Sub-clause (2) of clause 4 seeks to empower the Government to specify by notification in the Gazette such authority, not being an authority inferior to the appointing authority, who may also exercise the power conferred on the Government by sub-clause (1). Clause 7 seeks to empower the Government to make rules for the purpose of giving effect to the provisions of the Act.

4. The matters in respect of which notifications may be issued or rules may be made, are of an administrative or procedural nature. Further, the rules, after they are made, shall be subject to the scrutiny of the Legislative Assembly. The delegation of Legislative power is thus of a normal character.

P. J. JOSEPH

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1451/LA4A/78. *Dated, Trivandrum, 20th January 1978.*

The Kerala Criminal Law (Amendment) Bill, 1978 together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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33/228/MG

Fifth Kerala Legislative Assembly

Bill No. 43

THE KERALA CRIMINAL LAW AMENDMENT BILL, 1978.

A

BILL

further to amend the Indian Penal Code and the Prevention of Corruption Act, 1947, in their application to the State of Kerala.

Preamble.—WHEREAS it is expedient further to amend the Indian Penal Code and the Prevention of Corruption Act, 1947, in their application to the State of Kerala, for the purposes hereinafter appearing;

BE it enacted in the Twenty-eighth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Criminal Law Amendment Act, 1978.

(2) It shall come into force at once.

2. *Amendment of section 161, Central Act 45 of 1860.*—In section 161 of the Indian Penal Code (Central Act 45 of 1860), as amended by the Kerala Criminal Law Amendment Act, 1962 (27 of 1962), in the *Explanation* relating to 'Public Servant'—

(a) for item (vi), the following item shall be substituted, namely:—

"(vi) Every teacher or other officer or servant of any University established by an Act of the Kerala State Legislature or a law made by the President in exercise of the powers vested in him under sub-clause (a) of clause (1) of article 357 of the Constitution or an Ordinance promulgated by the Governor of Kerala under article 213 of the Constitution;";

(b) for item (viii), the following item shall be substituted, namely:—

"(viii) Every manager or teacher or servant of an educational institution which receives or has received aid or grant from the Government or any University referred to in clause (vi)".

3. *Amendment of Central Act 2 of 1947*.—In the Prevention of Corruption Act, 1947 (Central Act 2 of 1947), as amended by the Kerala Criminal Law Amendment Act, 1962 (27 of 1962)—

(i) in section 2, the words and figures "and the Kerala Criminal Law Amendment Act, 1978" shall be inserted at the end;

(ii) in section 6, clause (bb) of sub-section (1), for the words "save by or with the sanction of the State Government", the words and figures "and the Kerala Criminal Law Amendment Act, 1978, of the State Government" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The expression "public servant" as explained in clauses (vi) and (viii) of the Explanation relating to "public servant", inserted in section 161 of the Indian Penal Code by section 2 of the Kerala Criminal Law Amendment Act, 1962 (27 of 1962), includes every teacher or other officer or servant of the University of Kerala and every manager or teacher or servant of an educational institution which receives, or has received, aid or grant from the Government or the University of Kerala. The Kerala Criminal Law Amendment Act, 1962, also amended section 2 of the Prevention of Corruption Act, 1947, to bring the above categories within the purview of the expression 'public servant' as defined in section 2 of that Act and for certain other matters.

2. Three new Universities, namely, the Calicut University, the Cochin University and the Kerala Agricultural University, have come into existence in the State after the enactment of the Kerala Criminal Law Amendment Act, 1962. It is considered necessary to include officers and servants of the said Universities and managers, teachers and servants of educational institutions which receive, or have received, aid or grant from the said Universities also within the scope of the expression "public servant". It is also considered necessary to bring them within the purview of the Prevention of Corruption Act, 1947.

3. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation will not entail substantial additional financial commitment from the Consolidated Fund of the State since no appointment of additional staff is contemplated in the Vigilance Department. But there may be marginal increase in expenditure under travelling and daily allowances of the officers of the Vigilance Department and the witnesses. The additional expenditure which will have to be incurred on this account cannot now be estimated with any degree of accuracy.

P. J. JOSEPH.

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GOVERNMENT OF KERALA

Labour & Housing (G) Department

NOTIFICATION

G. O. Ms. 10/78/L&HD. *Dated, Trivandrum, 20th January 1978*

S. R. O. No. 75/78.—Whereas the term of appointment of the Chairman of the Kerala State Housing Board made in Notification No. G.O. Ms. No. 6/75/LA&SWD dated the 8th January, 1975 published as S.R.O. No. 26/75 in the Kerala Gazette Extraordinary No. 21 dated the 8th January, 1975 expired on 7th January, 1978;

Now, therefore, in exercise of the powers conferred by Section 4 read with Section 5 of the Kerala State Housing Board Act, 1971 (19 of 1971) the Government of Kerala hereby appoint Shri M. Gopi, Advocate, Kayamkulam as the Chairman of the Kerala State Housing Board.

By order of the Governor,

J. S. Badhan,
Secretary to Government.

33/229/MC.

Explanatory Note

(This note is not part of the Notification but is intended to indicate its general purport).

The term of the Chairman and non-official members of the Kerala State Housing Board appointed in Notification S.R.O. No. 26/75 dated 8th January, 1975 expired on 7-1-1978. This Notification is intended to fill up the vacancy consequent on the expiry of the term of the Chairman. Nomination of non-official members of the Kerala State Housing Board will be made separately.

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